

APPEAL NO. 150631  
FILED MAY 08, 2015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 23, 2015, in Amarillo, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], does extend to carpal tunnel syndrome of the right wrist; (2) the respondent (claimant) reached maximum medical improvement (MMI) on April 7, 2014; and (3) the claimant's impairment rating (IR) is 18%. The appellant (carrier) appealed the hearing officer's extent of injury, MMI and IR determinations based on sufficiency of the evidence. The claimant responded, urging affirmance.

**DECISION**

Affirmed in part and reversed and remanded in part.

It is undisputed that the claimant sustained a compensable injury on [date of injury]. The claimant testified that she injured the back of her right hand on a toilet paper dispenser in the restroom. The claimant had surgery to her right hand on September 18, 2013, and September 24, 2013. The Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. E) as designated doctor to determine MMI and IR.

**EXTENT OF INJURY AND MMI**

The hearing officer's determination that the compensable injury of [date of injury], extends to carpal tunnel syndrome of the right wrist is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the claimant reached MMI on April 7, 2014, is supported by sufficient evidence and is affirmed.

**IR**

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors.

The hearing officer determined that the claimant's IR is 18%, per the referral doctor's, (Dr. H), certification of MMI/IR. Dr. H examined the claimant on September 10, 2014, and in a Report of Medical Evaluation (DWC-69) dated that same date, certified the claimant reached MMI on April 7, 2014, with an 18% IR, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides).

Dr. H's 18% IR contains an error in applying the AMA Guides. Specifically, Dr. H measured a range of motion (ROM) of 5° dorsiflexion (extension) of the claimant's right wrist and assessed a 10% impairment using Figure 26 on page 3/36 of the AMA Guides. However, we note that Figure 26 does not provide a 10% impairment for a measured 5° extension; rather Figure 26, which uses increments of 10°, provides an 11% impairment for a measured 0° extension and a 8% impairment for a measured 10° extension. Dr. H incorrectly assessed 10% impairment for extension based on ROM.

Dr. H also improperly utilized Figure 29 on page 3/38 of the AMA Guides in assessing 3% impairment for the claimant's left wrist for a measured 14° of ulnar deviation. Dr. H failed to round the measurements of ulnar deviation of the wrist to the nearest 10° to determine the upper extremity (UE) impairment. Figure 29 on page 3/38, which is used to rate impairment based upon these measurements, uses increments of 5°, whereas the general directions on page 3/37 state to round the measurements of ulnar deviation to the nearest 10°. This conflict is resolved by looking to the general directions of interpolating, measuring, and rounding off which are found on page 2/9 of the AMA Guides and which provide as follows in relevant part:

In general, an impairment value that falls between those appearing in a table or figure of the *Guides* may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions.

Here the AMA Guides do give other directions than applying the values given in Figure 29 on page 3/38. Those directions are on page 3/37 and provide that the measurements be rounded to the nearest 10°. Using the language cited above from page 2/9 of the AMA Guides, these directions control over Figure 29 and should have been applied in calculating the claimant's IR. See Appeals Panel Decision (APD) 022504-s, decided November 12, 2002, and APD 111384, decided November 23, 2011. See *also* APD 131541, decided August 29, 2013.

Furthermore, Dr. H assessed 10% impairment for neuropathy from Table 16, page 3/57 of the AMA Guides. Dr. H assessed an 18% IR by combining the right UE impairment based on loss of ROM with an additional impairment assessed from Table

16. The AMA Guides provide on page 3/56 that “[i]mpairment of the hand and [UE] secondary to entrapment neuropathy may be derived by measuring the sensory and motor deficits as described in preceding parts of this section.” The AMA Guides provide that an alternative method is provided in Table 16 and states that the evaluator should not use both methods. Dr. H does not state whether or not the claimant’s impairment results strictly from a peripheral nerve lesion. See APD 130342, decided April 3, 2013, and APD 141129, decided July 29, 2014.

The Appeals Panel has previously stated that, where the certifying doctor’s report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor’s report and render a new decision as to the correct IR. See APD 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. However, in the case on appeal, Dr. H’s 18% IR cannot be mathematically corrected. As previously discussed, Dr. H did not properly apply the AMA Guides in assessing the claimant’s IR; therefore, Dr. H’s IR certification cannot be adopted. Dr. H assessed an impairment that is not provided for in Figure 26 for an extension measurement of the wrist. Accordingly, we reverse the hearing officer’s determinations that the claimant’s IR is 18%.

There are no other MMI/IR certifications in evidence with an MMI date of April 7, 2014. Therefore, we remand the issue of IR to the hearing officer for further action consistent with this decision.

### **SUMMARY**

We affirm the hearing officer’s determination that the compensable injury of [date of injury], extends to carpal tunnel syndrome of the right wrist.

We affirm the hearing officer’s determination that the claimant reached MMI on April 7, 2014.

We reverse the hearing officer’s determination that the claimant’s IR is 18%, and we remand the issue of IR to the hearing officer for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. E is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. E is still qualified and available to be the designated doctor. If

Dr. E is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's IR for the [date of injury], compensable injury.

The hearing officer is to advise the designated doctor that the date of MMI is April 7, 2014, and that the compensable injury of [date of injury], extends to carpal tunnel syndrome of the right wrist, as administratively determined. The hearing officer is to request the designated doctor to rate the entire compensable injury as of the date of MMI, which is April 7, 2014, in accordance with the AMA Guides considering the medical record and the certifying examination. The hearing officer is to advise the designated doctor, if he chooses to combine ROM and peripheral nerve involvement, the designated doctor is to clarify whether the assigned impairment for the wrist results strictly from a peripheral nerve lesion or if the restricted motion cannot be attributed to a peripheral nerve lesion. The doctor is also to round ROM figures and assign a corresponding impairment as required by the AMA Guides.

The parties are to be provided with the designated doctor's new IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the claimant's IR for the [date of injury], compensable injury as of the MMI date of April 7, 2014.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **SENTRY INSURANCE, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge